Veterans’ Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Bill 2018

Michael Klapdor
Social Policy Section

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Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at March 2018.
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Purpose of the Bill

The purpose of the Veterans’ Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Bill 2018 (the Bill) is to amend the Military Rehabilitation and Compensation Act 2004 (the MRCA), the Veterans’ Entitlements Act 1986 (the VEA) and a large number of other Acts in order to:

• provide additional childcare, counselling, household services and attendant care for current and former members of the Australian Defence Force (ADF) with warlike service, and their families
• provide a new Veteran Payment to veterans with little or no financial support until their compensation claims for liability for a mental health condition are determined
• commence the Coordinated Veterans’ Care Mental Health Pilot, a two-year pilot in rural and regional areas targeting those with mild to moderate mental health conditions such as anxiety or depression who also have a physical condition requiring pain management
• make it quicker to provide financial assistance with household and attendant care services to certain veterans with catastrophic injuries or diseases
• allow for the automated determination an individual’s qualifying service under the VEA removing the need for all veterans to manually apply for a determination of their defence service as qualifying service
• make a large number of changes to the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (the DRCA) replacing redundant references and repealing provisions unrelated to the operation of this Act
• makes technical amendments to the VEA to ensure consistent references to the Special Medical Review Council and
• a range of minor amendments including extending Gold Card eligibility under the Australian Participants in British Commonwealth Occupation Force (Treatment) Act 2006 to ADF members who served in Japan prior to the British Commonwealth Occupation Force and technical amendments to the VEA.

One of these measures—Schedule 5 relating to the automation of qualifying service determinations—is part of the Veteran Centric Reform program announced in the 2017–18 Budget.¹ The additional childcare and other services measures in Schedule 1, and the Veteran Payment measure in Schedule 2 were announced as part of the Government Response to the Senate Foreign Affairs, Defence and Trade Committee’s inquiry, Suicide by veterans and ex-service personnel.² The other proposed measures are related to correcting or improving the operation of the veterans’ entitlements and compensation schemes, and fixing errors or oversights in recent legislation.

Structure of the Bill and the Bills Digest

The Bill is divided into eight schedules proposing distinct measures. This Bills Digest will provide background information on veterans’ entitlements legislation and the Veteran Centric Reform Program and then provide analysis of each Schedule in separate sections.

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Background

General background to veterans’ legislation

There are three main Acts that provide for supports and compensation for veterans and their dependants:

- the VEA—which primarily provides benefits and entitlements for those who undertook operational service, peacekeeping service and hazardous military service before 1 July 2004, and/or peacetime military service from 7 December 1972 up to 6 April 1994
- the DRCA—which provides coverage for illness, injury or death arising from military service undertaken from 3 January 1949 to 30 June 2004; and for certain periods of operational service between 7 April 1994 and 30 June 2004. The DRCA contains provisions relating to military personnel that were previously contained in the Safety, Rehabilitation and Compensation Act 1988 (the SRCA) and commenced on 12 December 2017 and
- the MRCA—which provides coverage for illness, injury or death arising from military service undertaken from 1 July 2004.

The VEA provides four main types of benefits:

- compensation, through disability pensions to veterans, certain members of the Defence Force and members of peacekeeping forces, and war and defence widow/er’s pensions and orphan pensions for their dependants. These compensation payments are paid at rates determined by the level of impairment or by specific conditions or death and are not means-tested. They can be paid at the same time as income support payments
- income support, through service pensions for veterans with qualifying service and their partners, and income support supplements for war or defence widow/ers. These payments are means tested and are paid at the same rate as Centrelink pensions
- health care for veterans and their dependants and
- additional allowances and benefits for veterans and dependants (such as travel assistance, attendant and decoration allowances, and financial support for dependent children of veterans to undertake study).3

In order to be eligible for compensatory pensions through the VEA, a person’s disability or illness must be determined to be related to their service (that is, war-caused or defence-caused).

The DRCA and MRCA provide rehabilitation and compensation coverage for military service-related injuries, illnesses or death. The DRCA and the MRCA are different types of legislation to the VEA, with the MRCA and the DRCA being more like more modern workers’ compensation legislation—including the provision of both lump-sum payments and on-going payments—with elements reflecting the hazards particular to military service. This is also featured in these two Acts having payments rates linked to the rate of pay of the entitled recipient when they became ill or injured.

Both the MRCA and DRCA provide permanent impairment lump-sum payments, death benefits, wage-replacement incapacity payments, vocational and medical rehabilitation services, and a large range of allowances for additional costs (such as household services and attendant allowances).

Veteran Centric Reform Program

The 2016 Senate Foreign Affairs, Defence and Trade Committee’s inquiry into the mental health of serving ADF personnel received numerous submissions taking issue with the DVA claims process and its impact on veterans and their families.4 The Australian Public Service Commission also raised serious concerns with DVA’s service delivery models and claims processing in a 2013 capability review.5

The report of the Senate inquiry set out the main issues with DVA services:

• complex application processes and concerns that the process is becoming more adversarial
• issues with record keeping and procedural errors
• multiple and old ICT systems that are not able to be integrated
• a lack of case-coordination or continuity when dealing with DVA (DVA does provide case coordination for some clients and received additional funding in 2015–16 to expand this kind of assistance)
• the time taken to process claims and
• lack of services in regional and remote areas.6

The Committee’s main recommendation in relation to these issues was for adequate funding to be provided to update DVA’s ICT systems.

In the 2016–17 Budget, $24.8 million was allocated to DVA and the Department of Human Services (DHS) to develop a business case for ‘the transformation of the Department of Veterans’ Affairs—from a focus on claims processing to a client focused and connected service’.7

The 2017–18 Budget saw $166.6 million allocated to a Veteran Centric Reform Program: a package of measures aimed at overhauling the Department of Veterans’ Affairs’ (DVA) service delivery and infrastructure.8

DVA describes the rationale for Veteran Centric Reform:

New clients of the Department of Veterans’ Affairs (DVA) expect to receive personalised services that are connected across government and simple to access. They expect that their families will also receive appropriate services. DVA operations and infrastructure are no longer fit for purpose as current business systems are claims based, requiring the veteran to approach the Department, and lack the information sharing and data analysis necessary to meet veterans’ expectations of a quality service.

Without change, some veterans may continue to be disengaged from DVA services, which can inhibit a successful transition from the Australian Defence Force and lead to poor health and life outcomes.9

A key aim of the measures is to improve the transition process from the ADF to civilian life, and to ensure DVA can quickly identify the needs of veterans’ and families and provide appropriate supports:

5. Australian Public Service Commission (APSC), Capability review: Department of Veterans’ Affairs, APSC, Canberra, 5 December 2014.
The reform process will allow DVA to provide a seamless transition experience. The Department will aim to know about everyone who is serving and to use sophisticated analytics to connect them to the services they’re most likely to need based on their unique history and circumstances. In some cases, this will allow DVA to completely bypass the complexity of legacy systems, so that veterans and their families need only tell us things once.

Those who need help will get it quicker. At the moment DVA often finds out about veterans and families in need too late. Challenges that could have been managed early become chronic issues, leading to long periods in rehabilitation and treatment.10

The 2017–18 budget measure included funding for computer systems, changes to business processes and piloting new services. Some of the piloted measures include:

1. DVA will consider veterans’ needs by analysing the services they access through the Department, from car bookings through to health and rehabilitation services, to understand which policies, programs and early interventions are most in demand.

2. Building on the work of the Government’s Behavioural Economics Team, DVA will implement a two-year pilot of behaviour-informed design and trial small-scale policy interventions to evaluate different approaches to veteran support.

3. Taking the insights provided through proactive interventions 1 and 2 above, DVA will implement a framework to actively manage the assistance provided to veterans. The framework will provide real-time assessment of the effects of these initiatives so DVA can proactively alter support arrangements to better meet the needs of clients.

4. DVA will implement a two-year trial to provide veterans with access to medical treatment for specified conditions while their claim under the Military Rehabilitation and Compensation Act 2004 (MRCA) and the Safety, Rehabilitation and Compensation Act 1988 (SRCA) is being processed.11

Committee consideration

**Senate Standing Committee for the Selection of Bills**

On 15 February 2018, the Senate Selection of Bills Committee deferred consideration of the Bill until its next meeting.12

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing, the Senate Standing Committee for the Scrutiny of Bills had not considered the Bill.

**Policy position of non-government parties/independents**

Shadow Minister for Veterans’ Affairs and Defence Personnel, Amanda Rishworth, stated that Labor was supportive of the amendments in the Bill:

… in particular those which seek to implement the recommendations from the Senate inquiry and the Jesse Bird inquiry. Both those inquiries highlighted issues with a system that has become adversarial,

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lengthy and overly complicated, a system which has let down some of the people it is designed to assist.13

Nick Xenophon Team MP Rebekha Sharkie also provided ‘wholehearted support for the Bill’s extension of additional support services for veterans and their families and the establishment of the interim income support veteran payment’.14

At the time of writing, the position of other crossbench parties and independents was unclear.

**Position of major interest groups**

At the time of writing, the major ex-service organisations did not appear to have publicly commented on the Bill.

**Financial implications**

According to the *Explanatory Memorandum*, the measures in the Bill will cost an estimated $26.8 million in total over the forward estimates:

- Schedule 1—Family support will cost $7.1 million
- Schedule 2—Veteran Payment will cost $16.1 million
- Schedule 3—Coordinated Veteran Care mental health pilot will cost $3.6 million and
- Schedules 4–8 will have no financial impact.15

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.16

**Parliamentary Joint Committee on Human Rights**

At the time of writing, the Parliamentary Joint Committee on Human Rights had not considered the Bill.

**Schedule 1—Family support**

Schedule 1 will amend the *MRCA* to allow the Military Rehabilitation and Compensation Commission (via DVA) to provide a range of services to members and former members of the ADF who have rendered warlike service post 1 July 2004, and their families, with additional childcare assistance, brief intervention counselling, household services and attendant care.

The amendments to the *MRCA* will allow the Commission to make a legislative instrument setting out benefits and services to qualifying members, former members and their relatives. The amendments do not specify the actual services or benefits, the detailed eligibility criteria or any limits on the benefits that can be provided—these are to be set out in the legislative instrument.

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According to the Explanatory Memorandum, the kinds of assistance and benefits to be included are:

- childcare up to $10,000 per child per annum (under school age) and/or $5,000 per child per annum (primary school) and cover long day care and outside school hours care
- Brief Intervention Counselling\(^{17}\) extended to current and former ADF members with a current Rehabilitation Plan and their family members—entitled to up to 20 sessions in addition to any treatments provided by DVA via a Repatriation Health Card and
- additional household services, home care and counselling assistance for widow/ers of an ADF member to receive financial assistance for a range of services (including services such as garden maintenance, home help/domestic support) in the two years after the death of the ADF member.\(^{18}\)

These measures are intended to commence on 1 May 2018.

The measures were announced as part of the Government Response to the Senate Foreign Affairs, Defence and Trade Committee’s inquiry, Suicide by veterans and ex-service personnel.\(^{19}\)

Recommendation 19 of the Committee’s report suggested DVA look at new ways to support partners of veterans with mental health conditions or other disability:

... a consistent theme from the evidence received was that there was a lack of support for the partners of those veterans who have mental health conditions or have acquired severe disabilities arising from their service. The partners of veterans often act as the keystone of support for veterans, some as full-time or part-time carers. The situation of veterans often markedly declines when these relationships fail. In the view of the committee, this is a critical area for DVA to investigate and develop further measures of support.

**Recommendation 19**

The committee recommends that the Department of Veterans’ Affairs review the support for partners of veterans to identify further avenues for assistance. This review should include services such as information and advice, counselling, peer support and options for family respite care to support partners of veterans.\(^{20}\)

In its response, the Government also stated that it would ‘continue to review the support available to the partners of veterans through forums such as the Female Veterans Forum and the Veterans’ Families Forum’ and noted that there ‘are a number of initiatives currently underway in the Department of Veterans’ Affairs to review the support available to families and ensure it continues to meet their needs’.\(^{21}\)

**Key issues and provisions**

The amendments will allow the Military Rehabilitation and Compensation Commission to provide a range of new benefits to certain veterans and their families. The Commission will have the broad power to provide essentially any assistance or benefit, limited only by the allocated funding,
those veterans with warlike service and their families. While the proposed amendments suggest
that kind of benefits that can be provided may include child care, counselling or household
services, the provisions do not limit the assistance that can be provided to those listed items.

The benefits will be of significant assistance to veterans and their families, particularly with the
proposed child care assistance coming on top of existing Australian Government child care fee
assistance payments.22

**Key provisions**

**Item 1** omits and substitutes new words at the simplified outline of the Act at section 3 of the
MRCA to expand the list of items the Act provides for to include ‘certain assistance (such as child
care, counselling, or household services) to members or former members or to related persons of
members, former members or deceased members’. Currently, section 3 of the Act states that it
provides ‘compensation and other benefits’ to current and former members of the Defence Force
who suffer a service injury or disease, and to the ‘dependants of some deceased members’. The
amendments will make clear that the Act also provides other benefits to members or former
members (who may not have an accepted service injury or disease) and to the relatives of these
members (not only to those of deceased members).

**Item 3** adds the term *related person* to the list of definitions at subsection 5(1). The term is
defined by subsection 15(2) as amended by item 6. A *related person* will be any person who can
currently be considered a *dependant* of the member and includes: a partner, parent or step-
parent (including of the member’s partner), a grandparent, a child or stepchild (including of the
member’s partner), a grandchild, or a sibling (including half-brothers and half-sisters). **Item 5** will
change the definition of a *dependant* at subsection 15(1) to mean any *related person* who is
wholly or partly dependent on the member or who would be wholly or partly dependent on the
member but for an incapacity of the member resulting from an injury or disease (or aggravation
of an injury or disease).

**Item 7** inserts new Chapter 5A—Family Support which provides for the Military Rehabilitation and
Compensation Commission to make a legislative instrument providing for assistance or benefits of
a certain kind to a member or former member or to a related person of a member, former
member or deceased member. Under new subsection 268B(2), the instrument cannot provide for
the granting of assistance or benefits unless the member, former member or deceased member
has rendered warlike service on or after 1 July 2004. Warlike service is defined at paragraph
6(1)(a) and is service of a kind determined in writing by the Defence Minister to be warlike service
for the purpose of the MRCA.23

There are no limits on the kinds of benefits or assistance that can be provided, or the amounts.
The Explanatory Memorandum states that the instrument ‘is intended to enable a flexible and
responsive mechanism to ensure the needs of a member, former member, a person who is or was
a related person of a member or deceased member may be taken into account’.24 **Item 8** will
insert new paragraph 423(bb) to allow for the Consolidated Revenue Fund to be appropriated for
the purposes of providing the assistance or benefits under new section 268B. The amendments
delegate significant powers to the Military Rehabilitation and Compensation Commission to spend
public money with few legislative restrictions other than the warlike service requirement.

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**Schedule 2—Veteran payment**

Schedule 2 will introduce a new interim income support payment, the Veteran Payment, for individuals who have made a claim for a mental health condition under the DRCA or MRCA but have not yet had their claim determined, and who have little or no financial resources.

**Background**

The Veteran Payment was announced as part of the Government’s response to the Senate Foreign Affairs, Defence and Trade Committee’s 2017 report on suicide by veterans and ex-service personnel.25 The Committee had heard evidence that individuals being medically discharged from the ADF prior to having their claims finalised, and delays in DVA processing claims, could lead to financial stress and potentially exacerbate their mental health conditions.26

A separate internal review of the government’s handling of a compensation case made a specific recommendation for financial support to be provided to veterans with mental health problems prior to their claim being determined. Jesse Bird took his own life in June 2017 following difficulties accessing support services, employment and the rejection of his claim for compensation.27 Former Minister for Veterans’ Affairs, Dan Tehan, requested a review of the case by DVA, the Department of Defence and the Veterans and Veterans Families Counselling Service.28 The review’s 19 recommendations were made public and included a recommendation that the Minister consider:

> The provision of more timely incapacity compensation payments for those former members of the ADF incapacitated for service or work by mental health conditions, without the need for a determination that those mental health conditions are related to service.29

DVA apologised to Mr Bird’s family for the way in which its processes failed.30 Minister Tehan stated that the lessons from Mr Bird’s case helped inform the Government’s response to the Senate Committee report on veteran suicide.31

In this response, the Government committed to provide a ‘Veteran Payment’ to veterans with little or no financial support until their compensation claims for liability for a mental health condition are determined; and access to vocational and psychosocial rehabilitation and financial counselling.32 The measure is expected to cost $16.1 million over four years and commence on 1 May 2018.33

According to the former Minister for Veterans’ Affairs, Michael McCormack, the new payment will assist approximately 830 veterans and 690 partners in 2018–19.34

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28. Ibid.
29. DVA and Department of Defence, Joint inquiry into the facts surrounding the management of Mr Jesse Bird’s case: review recommendations, [24 October 2017], p. 3.
31. Ibid.
### Payment rates and eligibility

The payment will be available during the period between lodging a claim for a mental health injury and the claim being determined. According to the Explanatory Memorandum, the basic rate will be $913.00 per fortnight for a single person and $713.60 per fortnight for a partnered person and recipients may also be eligible for the pension supplement, rent assistance, Family Tax Benefit Part A and remote area allowance, depending on their circumstances.\(^\text{35}\)

To be eligible, individuals must be considered incapable of undertaking remunerative work for periods totalling more than eight hours per week. This is similar to the work eligibility criterion for the Special Rate of Disability Pension which requires that a veteran be prevented from undertaking their normal remunerative work or any other substantive work in their employment history for more than 8 hours per week, solely because of their war or defence service-caused condition.\(^\text{36}\)

Individuals receiving Veteran Payment will be required to participate in vocational and psychosocial rehabilitation, including financial counselling. Partners of a Veteran Payment recipient may also receive a payment (in circumstances to be set out in a legislative instrument).\(^\text{37}\)

Individuals will be unable to receive Veteran Payment at the same time as another income support payment or compensation under the VEA, MRCA, or the DRCA. A Veteran Payment is also not payable to a person who is a wholly dependent partner of a deceased member (within the meaning of the MRCA) except in situations where the person is entitled to a Veteran Payment in their own right (not as a partner). Other Australian Government income support payments, such as social security payments, will also not be payable at the same time as Veteran Payment.\(^\text{38}\)

### Key issues and provisions

The Veteran Payment will be an important support measure for veterans with mental health conditions navigating the often-lengthy compensation process. The level of support will be higher than the current pension rates, and much higher than other alternative payments such as Newstart Allowance (currently paid at a maximum rate of $538.80 per fortnight for a single person compared to the proposed $913 per fortnight for the Veteran Payment). Providing income support during this period will reduce financial stress for these veterans and their partners, and allow for improved access to health treatments. The requirement for recipients to participate in vocational and psychosocial rehabilitation, as well as financial counselling, should assist these families managing the transition to civilian life and improve future employment prospects.

### Eligibility and assessment issues

The proposed payment will include an eligibility criterion that the person be incapable of undertaking remunerative work for more than eight hours week.\(^\text{39}\) It is unclear how this will be assessed as the criteria are to be set out in a legislative instrument, not the Act. For the new payment to function according to its rationale it will be important for the assessment process to be simple and quick—the payment would not fulfil its purpose if there was a lengthy assessment of an individual’s work impairment.

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\(^{35}\) Explanatory Memorandum, op. cit., p. 22.


\(^{37}\) Explanatory Memorandum, op. cit., p. 22.

\(^{38}\) Ibid., p. 46

\(^{39}\) New paragraph 45SB(1)(d), inserted by item 1.
The Explanatory Memorandum states that other sorts of matters the legislative instrument is expected to cover include:

- enabling the payment to be paid up to 14 days before a claim under the MRCA or DRCA is made (to account for the fact that DVA payments are made in arrears and there could be a 14 day delay before the first payment is made)
- enabling the payment to be made for a specified period after the Military Rehabilitation and Compensation Commission has determined their claim (in order to allow for a smooth transition to any compensation payment or to another form of income support).

Again, the exact details are not specified in the Bill’s proposed amendments and it is unclear what further eligibility criteria might apply and how long the claim process will take.

The Veteran Payment will be means tested in the same way as the Service Pension (with an income and assets test). While this will ensure that the payment is targeted at those without adequate financial means to support themselves, it will limit the number of veterans eligible for the payment. Veterans with partners earning certain levels of income will be ineligible under the means test.

No Energy Supplement

The proposed rate calculator for the Veteran Payment makes no provision for the inclusion of an Energy Supplement. However, other supplementary payments such as the Pension Supplement, Rent Assistance and Remote Area Allowance may be payable. The Energy Supplement is payable with most veterans’ payments with the amounts varying by payment type. A single Service Pensioner would receive a maximum Energy Supplement of $14.10 per fortnight while a person in receipt of a Special Rate Disability Pension receives an Energy Supplement of $21.50 per fortnight.

The Government has proposed closing the Energy Supplement to new recipients with a Bill currently before the House of Representatives. Not making the Energy Supplement payable with the Veteran Payment is consistent with this policy. Item 499 will ensure that if the Bill to close the Energy Supplement proceeds, and a person who is receiving Energy Supplement with a social security payment transfers to Veteran Payment before transferring back to the social security payment, they will continue to receive the Energy Supplement with their social security payment.

Provisions

Item 1 inserts new Part IIIAA—Veteran payment into the VEA. New section 45SB provides for the Repatriation Commission to make a legislative instrument providing for and in relation to the making of a payment to certain persons who have made claims under the MRCA or the DRCA, or their partners. Eligible primary claimants for the proposed Veteran Payment are those who have made a claim under section 319 of the MRCA or under section 54 of the DRCA for an injury that is a ‘mental injury’ or a disease that is a mental ailment, disorder, defect or morbid condition. The instrument must also make provision for the making of a Veteran Payment to a primary claimant’s partner (if any) where the partner is an Australian resident and may also make provision for paying

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40. Ibid., p. 23.
43. Ibid.
a partner in situations where the partner was receiving a Veteran Payment and the primary claimant dies.

**New subsection 45SB(4)** provides for the instrument to also make provision for any further eligibility criteria or requirements, and the duration that the payment will be made for. The rate of payment is to be worked out according to Schedule 6 of the VEA (as amended by items 464–493). Rates will be adjusted in the same way as the Service Pension (item 411).

**New subsection 45SB(7)** restricts payment of Veteran Payment to those not in receipt of certain income support and compensation payments including service pension, Disability Pension, War Widow/er’s Pension, incapacity payments or the Special Rate Disability Pension.

**New subsection 45SB(8)** restricts payment of Veteran Payment to exclude a partner of a primary claimant where that person is receiving compensation under the MRCA as a wholly dependent partner (except where the partner is eligible for Veteran Payment in their own right—not only as a partner).

**New subsection 45SSB(9)** restricts payment of Veteran Payment to exclude recipients of an ABSTUDY Living Allowance.

**Part 2 of Schedule 2** consists of hundreds of consequential amendments to other Acts following the introduction of the Veteran Payment as a new form of income support. The amendments are in order to treat the payment in the same way as the Service Pension under other legislation including social security law, family assistance law, child support law, aged care law, tax law and other veterans’ affairs legislation. However, the Veteran Payment is not considered a pension under the VEA or any of these other Acts—it is intended as a temporary form of income support.45

Some of the amendments will ensure that a person cannot receive Veteran Payment at the same time as another income support payment, such as other veterans’ payments or a social security payment.

**Schedule 3—Coordinated Veteran Care mental health pilot**

A range of suicide-prevention pilot programs were announced in the 2017–18 Budget with $9.8 million provided over the forward estimates.46 Schedule 3 provides for a legislative instrument to be made for the purposes of one of these pilots, the Coordinated Veterans’ Care Mental Health Pilot (the CVC Mental Health Pilot). The pilot will run for two years and will cost an estimated $3.6 million over the forward estimates.47

This pilot program builds on the existing CVC Program ‘which uses a team-based model of care led by a General Practitioner [GP] and supported by a practice nurse’ to provide assistance to DVA Gold Card holders with chronic conditions or complex care needs.48

The CVC Mental Health Pilot will operate in rural and regional areas. GPs will ‘assess and diagnose clients, undertake care planning and refer clients to use an application on a smart device’.49 The application will deliver cognitive behaviour treatment. The pilot is to be targeted at those with mild to moderate mental health conditions such as anxiety or depression who also have a physical condition requiring pain management.

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48. *Explanatory Memorandum*, op. cit., p. 58; DVA, ‘*Coordinated Veterans’ Care*’, DVA website.
49. Ibid.
It is expected that the pilot will recruit up to 125 participants each year over two years.\textsuperscript{50} The amendments will commence on the 28th day after the Act receives Royal Assent.\textsuperscript{51}

**Provisions**

**Item 1** inserts new section 287A to the MRCA to provide for the Military Rehabilitation and Compensation Commission to determine a class of persons eligible for the Coordinated Veterans’ Care mental health pilot via a legislative instrument. **Item 2** inserts new section 90AA to the VEA for the same purpose.

**Schedule 4—Compensation for household and attendant care services where catastrophic injury or disease**

Schedule 4 will enable the Military Rehabilitation and Compensation Commission to determine in a legislative instrument the conditions that meet the definition of a *catastrophic injury or disease*, and to approve amounts payable to those with such a condition as compensation for household and attendant care services.

Currently, those with a catastrophic injury or disease may receive household or attendant care services according to their individual needs via an exceptional circumstances determination (under subsection 287(2) of the MRCA). Removing the requirement for such a determination to be made will allow for assistance to be provided more quickly.

The Explanatory Memorandum states that the definition of *catastrophic injury or disease* will include injuries or diseases such as serious neurological injury, paraplegia and quadriplegia.\textsuperscript{52} The Commission will be able to approve weekly amounts payable for household and attendant care services that it considers reasonable in the individual circumstances. The definition and framework for the provision of services will be broadly consistent with those contained in section 29A of the DRCA. This will provide consistency for those in similar circumstances but covered under different compensation Acts.

The amendments will commence on the 28th day after the Act receives Royal Assent and are not expected to have any financial impact.\textsuperscript{53}

**Provisions**

**Item 3** will insert a definition of *catastrophic injury or disease* at new subsection 213(1) of the MRCA (in Division 3 of Part 7 of the MRCA which deals with compensation for household and attendant care services). The definition will refer to an injury or disease satisfying the conditions to be set out in a legislative instrument made under new subsection 213(2) inserted by **item 4**.

**Items 6 and 8** insert new subsections 216(2) and 219(2), respectively, to provide for the Military Rehabilitation and Compensation Commission to determine the reasonable amount of weekly compensation payable for household and attendant care services for those with a catastrophic injury or disease, rather than the specified amounts set out in the MRCA.

\textsuperscript{50} Ibid.
\textsuperscript{51} Table item 8 of clause 2 of the Bill.
\textsuperscript{52} Explanatory Memorandum, op. cit., p. 61.
\textsuperscript{53} Ibid., p. 2 and table item 8 of clause 2 of the Bill.
Schedule 5—Qualifying service

Schedule 5 is the only amendment in the Bill specifically linked with the Veteran Centric Reform program. The amendments in Schedule 5 will allow the DVA to determine whether an individual has qualifying service under the VEA automatically, using information provided by the Department of Defence. This will mean that a veteran will not necessarily have to manually apply for recognition of their service as qualifying service—DVA will assess the service record information provided by Defence and automatically make a determination regarding qualifying service.

Qualifying service entitles a person to certain benefits such as a Service Pension, concession cards, DVA health cards (under certain circumstances) and the exemption of the DVA Disability Pension as income for the calculation of aged care fees. Members and former members of the ADF may have qualifying service if they:

- rendered service during the Second World War and incurred danger from hostile forces of the enemy (this criterion also applies to Australian mariners); or
- served in an operational area after the Second World War and were allotted for duty, or were a member of a unit that was allotted for duty in that operational area; or
- have warlike service; or
- served on certain submarine special operations between 1978 and 1992 and were awarded, or were eligible to be awarded, the Australian Service Medal with the Special Operations Clasp; or
- have been awarded, or were eligible to be awarded, a medal/clasp listed in the Qualifying Service factsheet under ‘Bomb Clearance or Minesweeping Clasp’.

Commonwealth or allied veterans may have Qualifying Service if they served prior to 12 January 1973 and incurred danger from a hostile force. If a Commonwealth veteran was awarded, or was eligible to be awarded, a campaign medal, they may also have Qualifying Service.  

The Explanatory Memorandum states that only positive determinations will be recorded in DVA systems with the veteran to be notified that they satisfy the qualifying service requirements. Where the automated process is unable to make a positive qualifying service determination, no determination will be made. The veteran will still be able to make a manual application for a qualifying service determination.

The Explanatory Memorandum also states that ‘recent data sharing improvements between Defence and DVA will improve the ability to share client information and over time streamline the information processes related to a client’s eligibility for benefits and payments’.  

The amendments will commence on the 28th day after Royal Assent and are not expected to have any financial impact. 

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55. Explanatory Memorandum, op. cit., p. 65.
56. Ibid.
57. Ibid., p. 2 and table item 8 of clause 2 of the Bill.
**Key issues and provisions**

The amendments will help to streamline the claims process, allowing DVA to make positive determinations relating to a veteran’s service using information provided by the Department of Defence. Improved information sharing between Defence and DVA can help ensure that veterans receive the supports and assistance they are entitled to, services are provided in a timely manner, and veterans are spared some of the difficulties involved in navigating the claims process.

**Provisions**

Item 4 substitutes **new section 35B and inserts new section 35BA** into the VEA to create two pathways to establishing qualifying service: a veteran or their partner making a claim for a determination that they or their partner rendered such service or a determination being in force under **new section 35BA**. The current section 35B provides that qualifying service can only be determined following a proper claim. New section 35BA provides that the Repatriation Commission may make a written determination that a veteran has rendered qualifying service if so satisfied. Such a determination is to be considered proof of qualifying service for all purposes of the VEA. A claim is not required and the Commission must provide a copy of the determination to the veteran or their partner.

**Schedule 6—Defence-related claims**

Schedule 6 makes technical amendments to the **DRCA**. This Act, which commenced 12 October 2017, essentially removed the military-compensation related components of the **SRCA** and placed them into a new Act.\(^{58}\) The **DRCA** has the same eligibility requirements and provides the same benefits for current and former members of the ADF with compensation coverage under the **SRCA**. The **DRCA** (and the former **SRCA**) provides coverage for illness, injury or death arising from military service undertaken from 3 January 1949 to 30 June 2004; and for certain periods of operational service between 7 April 1994 and 30 June 2004.\(^{59}\)

The amendments will replace redundant references and repeal provisions unrelated to the coverage of the **DRCA**.

**Items 325 and 326** in Part 1 of Schedule 6 will enable the Military Rehabilitation and Compensation Commission to provide information to the Chief of the Defence Force for the reconsideration or review of a determination made regarding the liability for the injury, disease or death of an employee. This amendment will align the information sharing provisions under the **DRCA** with those under the **MRCA**.

Amendments in Part 2 of Schedule 6 (**item 331**) will reinsert section 43 of the **SRCA** which was omitted during the drafting of the **DRCA**. The section allows certain peacekeepers eligible for compensation under the **VEA** and the **SRCA** to elect to not receive compensation under the **SRCA** (allowing them to choose under which Act they are to be compensated). Reinserting the section is to ensure certain peacekeepers are not disadvantaged. The amendments will commence retrospectively so that the positions of anyone affected by this removal will be the same as prior to the commencement of the **DRCA**.

The amendments are technical and described adequately in the Explanatory Memorandum.

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Schedule 7—Specialist Medical Review Council

The Schedule makes technical amendments to the VEA to ensure consistent references to the Specialist Medical Review Council (which reviews decisions made by the Repatriation Medical Authority). The amendments primarily replace references to ‘the Council’ with ‘the Review Council’.

Schedule 8—Other amendments

Schedule 8 makes minor amendments to the Australian Participants in British Nuclear Tests (Treatment) Act 2006 and the VEA.

The amendment to the Australian Participants in British Nuclear Tests (Treatment) Act 2006 (item 1) is to ensure that members of the ADF who served in Japan following the cessation of hostilities in World War II but before the formation of the British Commonwealth Occupation Force (BCOF) are entitled to a DVA Health Card—All Conditions within Australia (Gold Card). The Veterans’ Affairs Legislation Amendment (Budget Measures) Act 2017 provided Gold Cards to BCOF members but DVA has become aware of at least one person who did not fit the definition of BCOF member but who was in Japan as an ADF member after the cessation of hostilities.

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60. DVA, ‘Veterans’ health cards’, DVA website.